

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:22-cv-00164-MR**

MARLON BARTLETT,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
)	
FNU MILLER, et al.,)	
)	
Defendants.)	
_____)	

THIS MATTER is before the Court on the Plaintiff’s Motion for Relief from a Judgment or Order pursuant to Rule 60(a), (b)(1), and (c)(1). [Doc. 14].

Pro se Plaintiff Marlon Bartlett (“Plaintiff”) is a prisoner of the State of North Carolina currently incarcerated at Mountain View Correctional Institution (“Mountain View”) in Spruce Pine, North Carolina. He filed this action on August 22, 2022, against Defendants FNU Miller, William Wise, and Dexter Gibbs, pursuant to 42 U.S.C. § 1983. [Doc. 1]. The Court conducted initial review of Plaintiff’s Complaint pursuant to 28 U.S.C. § 1915(e)(2). [Doc. 9]. The Court found that Plaintiff failed to state a claim upon which relief can be granted and allowed Plaintiff until November 3,

2022, to amend his Complaint in accordance with the terms of the Court's Order. [Id.]. The Court advised Plaintiff that if he failed to timely file an amended Complaint, this action would be dismissed without prejudice and without further notice to Plaintiff. [Id. at 8]. On the same day, the Clerk's Office inadvertently mailed that Order, along with a blank § 1983 form, to Plaintiff at the wrong address.¹ [See 10/4/2022 (Court only) Docket Entry]. On October 20, 2022, the Court recognized the error and directed the Clerk to re-send the Order to Plaintiff at his correct address, which the Clerk did the same day. [See (Court only) 10/20/2022 Docket Entry]. On November 15, 2022, after Plaintiff's failure to timely amend his Complaint, the Court dismissed this action without prejudice for Plaintiff's failure to prosecute. [Doc. 11]. On the same day, eleven days after the deadline, Plaintiff mailed his Amended Complaint to the Court. [Doc. 13, 13-2].

Plaintiff now moves the Court under Rule 60(a) and (b)(1) of the Federal Rules of Civil Procedure for relief from the Order dismissing his case. [Doc. 14]. As grounds, Plaintiff states the Order allowing him to amend his Complaint was mailed to Avery/Mitchell Correctional Institution instead of Mountain View and that he "received the Amended Application Form(s) on

¹ The Clerk mailed these documents to Plaintiff at Avery/Mitchell Correctional Institution, which is also in Spruce Pine.

or around 10-22-22 or 10-23-22.”² Plaintiff further states that he mailed his Amended Complaint to the Court on November 14, 2022, and “the Court should have received it by now.”

The Court will deny Plaintiff’s Rule 60 motion. Plaintiff has not shown he is entitled to any relief thereunder. Although there was a delay in Plaintiff receiving the Court’s Order, he acknowledges he received it with sufficient time to comply. He sought no extension of the deadline and failed to file his Amended Complaint until 10 or 11 days thereafter. The Court properly dismissed this action. The Court, therefore, will deny Plaintiff’s motion and will strike the Amended Complaint from the record in this matter.³

ORDER

IT IS, THEREFORE, ORDERED that Plaintiff’s Motion [Doc. 14] is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff’s Amended Complaint [Doc. 13] is hereby **STRICKEN** from the record in this matter.

² It appears from Plaintiff’s Exhibits that the Court’s Order [Doc. 9] and the blank § 1983 form originally mailed to him at the wrong address were nevertheless forwarded to Plaintiff at Mountain View.

³ Although not determinative, the Court notes that Plaintiff has also failed to state any claim for relief in his Amended Complaint. [See Doc. 13].

IT IS SO ORDERED.

Signed: January 3, 2023

A handwritten signature in black ink, appearing to read "Martin Reidinger", written over a horizontal line.

Martin Reidinger
Chief United States District Judge

